

A Special Meeting of the Zoning Board of Appeals of the Town of Lancaster, Erie County, New York, was held at the Lancaster Town Hall, 21 Central Avenue, Lancaster, New York, on the 23rd day of January 2003, at 7:00 P.M. The purpose of this meeting was to render a determination upon the petition of Bella Vista Group, Inc., on behalf of NEC Transit/William LLC, 6495 Transit Road, Bowmansville, New York and John and Carolyn Martzolf, for six [6] variances on property located at the northeast corner of Transit Road and William Street in the Town of Lancaster.

PRESENT: ANTHONY ESPOSITO, MEMBER
 JOSEPH GIGLIA, MEMBER
 RICHARD QUINN, MEMBER
 ARLIE SCHWAN, MEMBER
 ROBERT THILL, MEMBER
 JEFFREY LEHRBACH, CHAIRMAN

ABSENT: WILLIAM MARYNIEWSKI, MEMBER

ALSO PRESENT: JOHANNA M. COLEMAN, TOWN CLERK
 RICHARD SHERWOOD, TOWN ATTORNEY
 GEORGE PEASE, ASSISTANT BUILDING INSPECTOR

The Affidavits of Publication and Posting of this Public Hearing are on file and a copy of the Legal Notice has been posted.

PETITION OF BELLA VISTA, INC., ON BEHALF OF NEC TRANSIT WILLIAM LLC

THE CASE TO BE HEARD BY THE Zoning Board of Appeals was that of the petition of Bella Vista Group, Inc., on behalf of NEC Transit William LLC, 6495 Transit Road Bowmansville, New York 14026, for six [6] area variances for the purpose of certain improvements to be made on premises owned by John and Carolyn Martzolf and by the petitioner, their designated representative, at the northeast corner of Transit Road and William Street, Lancaster, New York to wit:

A variance from the requirements of Chapter 50, Zoning, Section 28F.(1)(a) of the Code of the Town of Lancaster. The petitioner proposes to create parking spaces of eighteen [18] feet in length.

Chapter 50, Zoning, Section 28F.(1)(a) of the Code of the Town of Lancaster requires parking spaces to be a minimum of twenty [20] feet in length. The petitioner, therefore, requests a two-[2] foot variance.

A variance from the requirements of Chapter 50, Zoning, Section 28G.(5) of the Code of the Town of Lancaster. The petitioner's plans call for three [3] off-street loading spaces provided for a building with an approximate gross area of one hundred fifty thousand (150,000) square feet.

Chapter 50, Zoning, Section 28G.(5) of the Code of the Town of Lancaster requires six (6) off-street loading spaces. The petitioner, therefore, requests a variance of three [3] off-street loading spaces from the required six [6] off-street loading spaces.

A variance from the requirements of Chapter 50, Zoning, Section 30F.(2)(c)[3][b] of the Code of the Town of Lancaster. The height of the proposed pole sign is thirty [30] feet.

Chapter 50, Zoning, Section 30F.(2)(c)[3][b] of the Code of the Town of Lancaster limits the maximum height of a pole sign to twenty-five [25] feet. The petitioner, therefore, requests a five-[5] foot sign height variance.

A variance from the requirements of Chapter 50, Zoning, Section 19C.(7) of the Code of the Town of Lancaster. The petitioner proposes to not completely enclose the seasonal outdoor sales.

Chapter 50, Zoning, Section 19C.(7) of the Code of the Town of Lancaster requires that all principal and accessory uses, except signs, landscaping and off-street parking, loading and stacking shall be conducted within completely enclosed structures. The petitioner, therefore, requests a variance from the complete enclosure requirement for seasonal sales.

A variance from the requirements of Chapter 50, Zoning, Section 23B.(3) of the Code of the Town of Lancaster. The petitioner wishes to place lighting fixtures at a height of thirty-two [32] feet.

Chapter 50, Zoning, Section 23B.(3) of the Code of the Town of Lancaster provides that lighting fixture height above grade shall not exceed fifteen [15] feet in or adjacent to a residential district or use, and in no instance shall they exceed twenty [20] feet above grade. The petitioner, therefore, requests a variance of twelve [12] to seventeen [17] feet.

A variance from the requirements of Chapter 50, Zoning, Section 29D.(3) of the Code of the Town of Lancaster. The petitioner's plans call for approximately one (1) percent of the interior of the parking area to be devoted to landscaping.

Chapter 50, Zoning, Section 29D.(3) of the Code of the Town of Lancaster stipulates that not less than five [5] percent of the interior of the parking area designed for twenty [20] cars or more shall be devoted to the required landscaped area. The petitioner, therefore, requests a variance of four [4] percent of the five percent required interior parking area devoted to landscaping.

A motion by Mr. Lehrbach, seconded by Mr. Thill to consider and establish the GENERAL FINDINGS prior to the consideration and establishment of the SPECIFIC FINDINGS for each requested variance.

The question of the adoption of the foregoing motion was duly put to a vote on roll call which resulted as follows:

MR. ESPOSITO	VOTED YES
MR. GIGLIA	VOTED YES
MR. MARYNIEWSKI	WAS ABSENT
MR. QUINN	VOTED YES
MR. SCHWAN	VOTED YES
MR. THILL	VOTED YES
MR. LEHRBACH	VOTED YES

Motion Carried

The Clerk presented into evidence the following items:

Duly executed petition of the applicant with exhibits and schedules attached thereto.

Copy of a letter notifying the petitioner of the time and place of this public meeting.

Copy of a letter notifying owners of property within 100 feet of the premises on which these variances are sought of the time and place of the public hearing that was held on January 9, 2003.

Copy of letters notifying the Erie County Department of Environment & Planning of the time and place of the public hearing held on January 9, 2003 and this meeting held on January 23, 2003.

Copy of letters notifying the Town of Cheektowaga of the time and place of the public hearing held on January 9, 2003 and this meeting held on January 23, 2003.

It is to be noted that a full SEQRA Environmental Impact Statement has been previously accepted by the Town of Lancaster Town Board as well as the Municipal Review Committee in resolutions dated April 8, 2002. It is additionally noted that the Supplemental Draft Environmental Impact Statement (SDEIS) and the Final Environmental Impact Statement (FEIS) are duly filed in the Office of the Town Clerk; copies of each have been previously hand delivered to the Zoning Board of Appeals members.

**IN THE MATTER OF THE PETITION OF BELLA VISTA GROUP,
INC., ON BEHALF OF NEC TRANSIT WILLIAM LLC**

A motion was made by Mr. Lehrbach, seconded by Mr. Esposito to adopt GENERAL FINDINGS for all variances.

WHEREAS, on May 6, 2002, the Town of Lancaster Planning Board previously approved a site plan submitted by the petitioner for the development of a retail shopping establishment on approximately 36 acres of land located at the northeast corner of Transit Road and William Street in the Town of Lancaster (the "Property"), and

WHEREAS, the Town of Lancaster Zoning Board of Appeals previously granted two area variances for the aforementioned project on June 13, 2002, but due to changes in the design and size of the building and improvements of the proposed retail development, those variance approvals were rescinded at the applicant's request on November 14, 2002, and

WHEREAS, on December 24, 2002, the applicant submitted a revised site plan reflecting said changes for the Property for Planning Board review and Town Board approval, and

WHEREAS, this matter is properly before this Zoning Board of Appeals from a rejection of the Building and Zoning Inspector of the Town of Lancaster to approve a building permit due to various items in the revised site plan that do not conform to the provisions of Chapter 50, Zoning of the Code of the Town of Lancaster and therefore will now require the granting of six area variances, and

WHEREAS, the Zoning Board of Appeals of the Town of Lancaster has reviewed the petitioner's application and has heard and taken testimony and evidence at a public hearing held before it at 21 Central Avenue, Lancaster, New York, on the 9th day of January, 2003, and having heard all of the parties interested in said application pursuant to the legal notice duly published and posted, and

WHEREAS, the Zoning Board of Appeals of the Town of Lancaster has made the following general findings which are pertinent to each requested variance.

GENERAL FINDINGS

That this matter is properly before this Zoning Board of Appeals from a rejection of the Building and Zoning Inspector of the Town of Lancaster to approve a building permit due to various items in the revised site plan that do not conform to the provisions of Chapter 50, Zoning of the Code of the Town of Lancaster and therefore will now require the granting of six area variances, and

That the applicant is the owner of a portion of the premises in question and, with respect to the remaining portion, is the designated representative of the landowners John and Carolyn Martzolf.

That the property for which the applicant is petitioning is within a General Business District (GB) as specified in Chapter 50 of the Code of the Town of Lancaster and as set forth in the map of the Town of Lancaster adopted on May 15, 1989, and as amended to date.

That the premises upon which the variances are sought are located at the northeast corner of the intersection of Transit Road and William Street within the Town of Lancaster. The premises have entrance access on William Street but are set back approximately 235 feet from Transit Road.

That Transit Road is a New York State Arterial Roadway known as Route 78.

That the centerline of Transit Road is the west boundary of the Town of Lancaster and the east boundary of the Town of Cheektowaga.

That the Town of Cheektowaga and, pursuant to section 239m of the General Municipal Law, the Erie County Department of Environment and Planning, have been notified of the time and place of the public hearing on these variances.

That the Erie County Division of Planning has determined that the proposed project is a matter of local concern, and limited comments from the County Traffic Safety Engineer do not concern the requested variances.

That the character of the neighborhood is as follows:

1. Property to the rear and east of the proposed development is residential. A townhouse development locally known as Northwood Village is contiguous to the east rear property line of the proposed development.
2. Property to the north of the proposed development is commercial with a few scattered residences on Transit Road.
3. Property to the west fronting on Transit Road and contiguous to the proposed development is commercial - Applebees, a proposed McDonalds and a proposed Sunoco gas station. Property across Transit Road in the Town of Cheektowaga is Commercial - a Charter One Bank and a Wegmans shopping center.

4. Property to the south of the proposed development is commercial and residential. An Eckerd Drug Store is on the southeast corner of Transit Road and William Street. A Flix movie theater has entrance access on Transit Road and on William Street. A townhouse development locally known as Eastwood Village has entrance access on William Street near the proposed development and has a west property line contiguous to the Flix movie theater property.
5. The Town of Lancaster has formalized a Comprehensive Plan dated 1999, by Peter J. Smith & Company and The Saratoga Associates, which recognizes Transit Road as a regional corridor for commerce. The State of New York recently undertook a major project to widen Transit Road from two lanes to five lanes, adjacent west of the Property, to accommodate and manage vehicular traffic and commercial development along Transit Road. The widening of Transit Road between Broadway and French Road as a regional corridor for commercial and business development has been supported by the Town of Lancaster, Village of Lancaster, Town of Cheektowaga, Town of West Seneca and Village of Depew.

The question of the adoption of the foregoing motion was duly put to a vote on roll call which resulted as follows:

MR. ESPOSITO	VOTED YES
MR. GIGLIA	VOTED YES
MR. MARYNIEWSKI	WAS ABSENT
MR. QUINN	VOTED YES
MR. SCHWAN	VOTED YES
MR. THILL	VOTED YES
MR. LEHRBACH	VOTED YES

Motion carried

VARIANCE #1 - SPECIFIC PARKING SPACE FINDINGS

A motion was made by Mr. Esposito, seconded by Mr. Quinn to adopt specific findings for Variance #1 - Parking Space Length.

That an attorney representing the interests of a group of citizens known by the acronym CARS [Citizens Against Retail Sprawl] and three residents of Northwood Village, a townhouse development to the east of the proposed development, spoke in opposition to the granting of this variance. They expressed concerns about the safety of pedestrian and vehicle movement within the parking area that would result from the reduction in the length of the parking spaces from 20 feet to 18 feet.

That the proposed parallel parking spaces, 9.5 feet wide, 18 feet long, with an aisle separation of 25 feet for two-way vehicle operation, exceed the minimum recommended mobility dimensions for 2.7 meter wide parking stalls parallel to the aisle as set forth in the New York State Highway Design Manual.

That the applicants' proposed reduction of the length of the parking spaces from 20 feet to 18 feet will have no discernable impact on the character of the neighborhood or cause any detriment to nearby properties or traffic patterns. The slightly shorter parking spaces will be otherwise indistinguishable from other parking spaces located in the area and the minor alteration will not be noticeable to or compromise the safety of either customers using the parking spaces or passers-by. The two-foot reduction in length is also off-set by a one-half foot increase in width. The applicant has submitted documentation reflecting that the dimensions of the proposed parking spaces are within the range of dimensions required by other municipalities and remain longer than need to accommodate the typical consumer vehicles that are expected to utilize the spaces. The parking space adjustment also allows the applicant to configure the parking area such that the building will be located farther west (away from the adjacent residential area) and further facilitates a larger than normally required vegetated buffer between the residential area and the proposed development, thereby mitigating the overall impact of the project on the residential area.

PROPOSERS

Joseph Cipolla, petitioner
Steven Ricca, Attorney

ADDRESS

35 Hillside Parkway
12 Fountain Plaza, Buffalo

OPPOSERS

David Seeger, Attorney
Paul Przybysz
Lee Chowaniec
Loree Paulson

ADDRESS

69 Delaware Avenue, Buffalo
66 Northwood Drive
93 Northwood Drive
91 Northwood Drive

The question of the adoption of the foregoing motion was duly put to a vote on roll call which resulted as follows:

MR. ESPOSITO	VOTED YES
MR. GIGLIA	VOTED YES
MR. MARYNIEWSKI	WAS ABSENT
MR. QUINN	VOTED YES
MR. SCHWAN	VOTED YES
MR. THILL	VOTED YES
MR. LEHRBACH	VOTED YES

Motion Carried

VARIANCE #2 - SPECIFIC OFF-STREET LOADING SPACE FINDINGS

A motion was made by Mr. Esposito, seconded by Mr. Quinn to adopt specific findings for Variance #2 - Off-Street Loading Space.

That an attorney representing the interests of a group of citizens known by the acronym CARS [Citizens Against Retail Sprawl] and certain residents of Northwood Village, a townhouse development to the east of the proposed development, and a resident of Harris Hill Road spoke in opposition to the granting of this variance. They expressed concerns about potential noise and air pollution migrating off the development site from tractor-trailers queued and stacked in a waiting pattern for entrance to one of the three loading dock bays.

That the Final Environmental Impact Statement for the Gateway Center Rezoning and Retail Development contains the following developer's response to concerns raised by certain Northwood Village residents concerning possible noise and emissions from the development site: "Large truck deliveries will be restricted to the sides of the building; no large truck deliveries will be made in the rear of the buildings. The buildings will be designed so that there will be insufficient room for large trucks to access the rear of the building. During deliveries, trucks will not be allowed to idle for more than a specified short period of time. This will greatly reduce nuisance sound and emission problems from deliveries. All deliveries will be made during daylight hours." Page 2-67. The intent of the Zoning Board of Appeals is not to restrict access to the rear of the building by any emergency vehicle.

That a reduction in the number of required loading spaces will not change the commercial nature of the area and will not have a negative impact on neighboring properties. The proposed number of off-street loading spaces is the standard number used by the proposed retail establishment in over 3,300 locations and has proven to be more than sufficient for ensuring the orderly operation of loading and unloading functions. Strict adherence to the Code requirements would present no operational advantages and would require changes in the building layout and accompanying buffer area reductions, and the addition of more loading areas may be deemed less desirable by the residents living to the east of the project area. The loading spaces consist of enclosed vestibules and include a significant adjoining buffer area with enhanced landscaping to address the concerns of neighboring residents.

PROPOSERS

Joseph Cipolla, Petitioner
Steven Ricca, Attorney

ADDRESS

35 Hillside Parkway
12 Fountain Plaza, Buffalo

OPPOSERS

David Seeger, Attorney
Lee Chowaniec
Martin Galczynski
Terry Richard
James Brett

ADDRESS

69 Delaware Avenue, Buffalo
93 Northwood Drive
2 Northwood Drive
105 Northwood Drive
659 Harris Hill Road

The question of the adoption of the foregoing motion was duly put to a vote on roll call which resulted as follows:

MR. ESPOSITO	VOTED YES
MR. GIGLIA	VOTED YES
MR. MARYNIEWSKI	WAS ABSENT
MR. QUINN	VOTED YES
MR. SCHWAN	VOTED YES
MR. THILL	VOTED YES
MR. LEHRBACH	VOTED YES

Motion Carried

VARIANCE #3 - SPECIFIC POLE SIGN HEIGHT FINDINGS

A motion was made by Mr. Lehrbach, seconded by Mr. Quinn to adopt specific findings for Variance #3 - Pole Sign Height.

That 25 foot poles signs for national establishments known as "Applebees" and "Eckerd Drugs" are located at approximately 120 feet south and 854 feet south, respectively, of the proposed Walmart sign, and both comply with the 25 foot high limitation in Chapter 50, Zoning of the Code of the Town of Lancaster.

That the proposed Gateway Center Development also shows a proposed McDonalds Restaurant and a Sunoco Gas Station approximately 500 feet south and 600 feet south, respectively, of the proposed Wal Mart sign.

That based upon the foregoing, it is anticipated that there will be a minimum of four pole signs on Transit Road for the Gateway Center Development.

That an attorney representing the interests of a group of citizens known by the acronym CARS [Citizens Against Retail Sprawl] and certain residents of Northwood Village, a townhouse development to the east of the proposed development, spoke in opposition to the granting of this variance. They expressed concerns about sign height competition and pollution between the other proposed developments at the site.

That the petitioner has indicated that a 5 foot variance for the Wal Mart pole sign at the main entrance on Transit Road is necessary given the limited frontage on Transit Road and close proximity to signage for the out-parcels, and is intended to conform to the standard sign size for the proposed retail establishment. That the developer has further indicated that the sign will be consistent with the intent behind Section 50-30(A) of the Town Code in that the proposed sign will be aesthetically harmonious with other illuminated signs existing along the Transit Road commercial corridor, will not obstruct or project over any public right-of-way or interfere with traffic. (Zoning Board of Appeals Members Thill and Schwan indicated their disapproval with this finding).

That the proposed Wal Mart sign on Transit Road will be approximately 1,000 feet away from the Northwood Village.

That the speed limit on Transit Road in front of the proposed development is 45 (forty five) miles per hour.

PROPOSERS

Joseph Cipolla, Petitioner
Steven Ricca, Attorney

ADDRESS

35 Hillside Parkway
12 Fountain Plaza, Buffalo

OPPOSERS

Paul Przybysz
David Kratzke
David Seeger, Attorney
Loree Paulson

ADDRESS

66 Northwood Drive
14 Northwood Drive
69 Delaware Avenue, Buffalo
91 Northwood Drive

The question of the adoption of the foregoing motion was duly put to a vote on roll call which resulted as follows:

MR. ESPOSITO	VOTED YES
MR. GIGLIA	VOTED YES
MR. MARYNIEWSKI	WAS ABSENT
MR. QUINN	VOTED YES
MR. SCHWAN	VOTED YES*
MR. THILL	VOTED YES*
MR. LEHRBACH	VOTED YES

* Except as otherwise noted.

Motion Carried

VARIANCE #4 - SPECIFIC OUTDOOR SEASONAL SALES FINDINGS

A motion was made by Mr. Esposito, seconded by Mr. Quinn to adopt specific findings for Variance #4 - Outdoor Seasonal Sales.

That Chapter 50 Zoning, Section 23F, of the Code of the Town of Lancaster recites as follows: "outdoor display of merchandise is allowed as an accessory use in any business districts, except the RCO district, but not within the yards required for the parking, loading and stacking areas."

That Chapter 50 Zoning, Section 19C.(7) of the Code of the Town of Lancaster recites as follows: "Enclosure. All principal and accessory uses, except signs, landscaping and off-street parking, loading and stacking shall be conducted within completely enclosed structures."

That Chapter 50 Zoning, Section 19C.(7) of the Code of the Town of Lancaster is at odds with and inconsistent with the provisions of Chapter 50 Zoning, Section 23F. That when you enclose an outdoor display of merchandise [permitted as an accessory use pursuant to Section 23F] in a completely enclosed structure it is no longer an outdoor display.

That use of the parking spaces in the parking lot set forth on the site plan of the proposed Gateway Center Development for "Seasonal Sales Area" will not diminish the parking spaces for the development below the minimum required parking spaces set forth in Chapter 50 of the Code of the Town of Lancaster for the proposed 150,327 square foot retail shopping establishment.

That the requested variance will allow for the seasonal use of a partially enclosed area of the site to display and sell selected merchandise, such as garden supplies but not limited to, which is a use typically associated with retail shopping centers such as the proposed retail establishment and other similar establishments existing along the Transit Road commercial corridor. As such, the proposed use will be consistent with existing retail development in the area and will not cause an undesirable change in that area.

That certain residents of Northwood Village, a townhouse development to the east of the proposed development, spoke in opposition to the granting of this variance. They expressed concerns about possible unsightliness of stacked merchandise and possible migration of herbicides and pesticides off the premises due to potential spillage of or damage to the packaging of such products.

That the property or neighboring property will be screened to a substantial degree by trees and other plantings along the perimeter of the property.

PROPOSERS

Joseph Cipolla, Petitioner
Steven Ricca, Attorney

ADDRESS

35 Hillside Parkway
12 Fountain Plaza, Buffalo

OPPOSERS

Terry Richard
Lee Chowanec
Paul Przybysz
Martin Galczynski
Loree Paulson

ADDRESS

105 Northwood Drive
93 Northwood Drive
66 Northwood Drive
2 Northwood Drive
91 Northwood Drive

The question of the adoption of the foregoing motion was duly put to a vote on roll call which resulted as follows:

MR. ESPOSITO	VOTED YES
MR. GIGLIA	VOTED YES
MR. MARYNIEWSKI	WAS ABSENT
MR. QUINN	VOTED YES
MR. SCHWAN	VOTED YES
MR. THILL	VOTED YES
MR. LEHRBACH	VOTED YES

Motion Carried

VARIANCE #5 - SPECIFIC LIGHT FIXTURE HEIGHT FINDINGS

A motion was made by Mr. Lehrbach, seconded by Mr. Quinn to adopt specific findings for Variance #5 - Lighting Fixture Height.

That an attorney representing the interests of a group of citizens known by the acronym CARS [Citizens Against retail Sprawl], certain residents of the Northwood Village, a townhouse development to the east of the proposed development, and a resident of Park Blvd. spoke in opposition to the granting of this variance. They expressed concerns about light potentially emanating from the proposed light fixtures to the residential development to the east known as Northwood Village.

That the request for a variance to allow a maximum light fixture height of 32 feet will not produce an undesirable change in the character of the neighborhood and will not create a detriment to nearby properties, as this height is equal to or lower than most other comparable commercial properties located along the Transit Road commercial corridor. The requested variance therefore is consistent with established development patterns in the area. The variance also will not negatively affect adjacent residential properties to the east due to the layout of the project and other mitigation measures. (Zoning Board of Appeals Member Thill indicated he does not support this finding).

That the applicant has submitted a light diffusion analysis and the Illuminating Engineering Society Guidelines indicating that there will be no significant adverse off-site lighting impacts. The nearest light pole will be approximately 420 feet from the nearest residence, and the light poles will be screened to a substantial degree by the building, the berm and evergreen buffer to be located on the eastern boundary of the site, and the existing heavily wooded area along the eastern boundary of the site. In addition, the use of specially designed light fixtures incorporating flat lenses will minimize adverse impacts on adjoining properties. The neighboring residential property owners have expressed their support for the use of such flat lens lighting. The light fixtures are necessary to ensure the safety and security of customers, employees and others using the paved area around the project area.

That strict compliance with the Code requirements would require approximately twice as many light fixtures and greater energy consumption.

That the applicant has indicated in the event that the neighboring property owners express a problem with a light fixture, light shields will be installed.

PROPOSERS

Joseph Cipolla, Petitioner
Steven Ricca, Attorney

ADDRESS

35 Hillside Parkway
12 Fountain Plaza, Buffalo

OPPOSERS

David Seeger, Attorney
Lee Chowanec
Paul Przybysz
Gary Howell

ADDRESS

69 Delaware Avenue, Buffalo
93 Northwood Drive
66 Northwood Drive
48 Park Blvd.

The question of the adoption of the foregoing motion was duly put to a vote on roll call which resulted as follows:

MR. ESPOSITO	VOTED YES
MR. GIGLIA	VOTED YES
MR. MARYNIEWSKI	WAS ABSENT
MR. QUINN	VOTED YES
MR. SCHWAN	VOTED YES
MR. THILL	VOTED YES
MR. LEHRBACH	VOTED YES

Motion Carried

VARIANCE #6 - SPECIFIC PARKING AREA LANDSCAPING FINDINGS

A motion was made by Mr. Lehrbach, seconded by Mr. Esposito to adopt specific findings for Variance #6 - Interior Parking Landscape Area.

That the reduction in the percentage of the parking area that must be landscaped will be offset by the proposed landscaping along the eastern boundary of the site and the fact that the overall landscaping plan for the project area exceeds the 15% Code requirements under Section 50-29(D)(1). Further, the applicant will include more than the required plantings on William Street and has previously incorporated extensive landscaping along Transit Road to enhance the aesthetic value of the project frontage and reducing the impact the development will have on neighboring properties. That the applicant has indicated that the requested variance is necessary to ensure efficient movement of vehicular traffic and to allow for the expanded buffer area on the eastern boundary of the site. That the applicant has indicated that the site will be extensively landscaped, visually attractive and will provide the maximum possible buffer for the adjacent residential area. The creation of an expanded buffer area on the eastern boundary of the site in response to the concerns of adjacent residential property owners and the resulting difficulty in harmonizing the minimum parking space and landscaping requirements have created the need for the requested variance.

PROPOSERS

Joseph Cipolla, Petitioner
Steven Ricca, Attorney

ADDRESS

35 Hillside Parkway
12 Fountain Plaza, Buffalo

OPPOSERS

Paul Przybysz
David Seeger, Attorney
Gary Howell
Terry Richard
Moiria Richard

ADDRESS

66 Northwood Drive
69 Delaware Avenue, Buffalo
48 Park Blvd.
105 Northwood Drive
128 Northwood Drive

The question of the adoption of the foregoing motion was duly put to a vote on roll call which resulted as follows:

MR. ESPOSITO	VOTED YES
MR. GIGLIA	VOTED YES
MR. MARYNIEWSKI	WAS ABSENT
MR. QUINN	VOTED YES
MR. SCHWAN	VOTED YES
MR. THILL	VOTED YES
MR. LEHRBACH	VOTED YES

Motion Carried

SEQRA FINDINGS

That a more extensive site development proposal than that reflected in Exhibit A-1 of the applicant's current variance application has been the subject of extensive review and public hearings by the Town of Lancaster Municipal Review Committee, Planning Board and Town Board under the State Environmental Quality Review Act ("SEQRA") in connection with the applicant's prior rezoning application. That rezoning application included a conceptual site plan encompassing approximately 36.9 acres for a commercial development that would convert approximately 33.63 acres for the construction of not one, but two buildings, totaling approximately 270,000 square feet and associated parking, driveways, storm water retention and related facilities.

That the Municipal Review Committee and Town Board on April 8, 2002 adopted a detailed and comprehensive Findings Statement concluding that a full development of the site in accordance with the aforementioned conceptual site plan, the applicant's project incorporating the mitigation and enhancement measures set forth in the EIS would avoid or mitigate any adverse environmental effects to the maximum extent practicable.

That the aforementioned SEQRA process included the preparation of a Supplemental Draft Environmental Impact Statement (SDEIS) and Final EIS (FEIS) addressing potential impacts on, among other things, traffic conditions (SDEIS § 4.2.2.7; FEIS § 2.6), visual resources and aesthetics (SDEIS § 3.5.1; FEIS § 2.1), lighting (SDEIS § 6.2.6; FEIS § 2.9) and noise (FEIS § 2.7) associated with a "full build-out" scenario at the premises in question.

That the Zoning Board of Appeals has considered the petitioner's application for each of the requested area variances and accompanying SDEIS and FEIS, the aforementioned SEQRA Findings, which findings are hereby adopted and incorporated herein, and comments received from the public.

That the Zoning Board of Appeals has considered the potential environmental impacts, facts and conclusions disclosed in the foregoing documentation and comments that are relevant to the area variances currently sought by the petitioner.

That the Zoning Board of Appeals has weighed and balanced the relevant environmental impacts with social, economic and other considerations.

That the Zoning Board of Appeals has, based upon the foregoing review and its detailed findings of fact concerning the requested variances, determined that said variances will not, either individually or cumulatively, present any significant adverse environmental impacts on traffic conditions, visual resources and aesthetics, lighting, air quality, noise levels, the existing community or neighborhood character, human health or safety or other environmental criteria addressed in the SEQRA regulations at 6 N.Y.C.R.R. Part 617.7. **N.B. After discussion by the members of the Zoning Board of Appeals unanimous approval to this finding was rendered.**

That the Zoning Board of Appeals has, based upon the foregoing review and the detailed findings of fact herein, determined that any adverse environmental impacts associated with the requested variances will be avoided or minimized by incorporating as conditions to the decision those mitigative measures that were identified as practicable.

That the accompanying certification of SEQRA compliance is incorporated herein.

That the Zoning Board of Appeals of the Town of Lancaster vote upon the adoption of the foregoing SEQRA Findings:

ON MOTION OF ZONING BOARD MEMBER ESPOSITO AND SECONDED BY ZONING BOARD MEMBER LEHRBACH FOR ADOPTION OF THE FOREGOING SEQRA FINDINGS, on roll, which resulted as follows:

MR. ESPOSITO	VOTED YES
MR. GIGLIA	VOTED YES
MR. MARYNIEWSKI	WAS ABSENT
MR. QUINN	VOTED YES
MR. SCHWAN	VOTED YES
MR. THILL	VOTED YES
MR. LEHRBACH	VOTED YES

Motion adopted

NOW, THEREFORE, BE IT FURTHER RESOLVED,

That the Zoning Board of Appeals of the Town of Lancaster vote upon the granting of each of the six requested variances individually, to wit:

Variance #1 - A variance from the requirements of Chapter 50, Zoning, Section 28F.(1)(a) of the Code of the Town of Lancaster for the purpose of reducing the required length of parking spaces from 20 feet to 18 feet.

Based upon the foregoing factual and SEQRA findings, the Zoning Board of Appeals of the Town of Lancaster further finds that, with respect to Variance #1,

No undesirable change will be produced in the neighborhood by the granting of the area variances sought.

No detriment to nearby properties will result from the granting of the area variances sought.

The benefit sought by the applicant cannot be achieved by some other method, feasible for the applicant to pursue, other than the area variance relief sought.

The requested area variance relief is not substantial.

The proposed area variance relief will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

The alleged difficulty is self-created but not to the extent necessary to preclude the granting of the area variance relief sought.

This board has taken into consideration the benefit to the applicant if the variance relief sought is granted as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant.

Within the intent and purposes of this ordinance the variance relief sought, if granted, is the minimum variance necessary to afford relief.

ON MOTION OF ZONING BOARD MEMBER QUINN AND SECONDED BY ZONING BOARD MEMBER SCHWAN FOR ADOPTION OF THE FOREGOING RESOLUTION TO APPROVE VARIANCE NUMBER ONE, on roll, which resulted as follows:

MR. ESPOSITO	VOTED YES
MR. GIGLIA	VOTED NO
MR. MARYNIEWSKI	WAS ABSENT
MR. QUINN	VOTED YES
MR. SCHWAN	VOTED YES
MR. THILL	VOTED YES
MR. LEHRBACH	VOTED YES

Variance granted

Variance #2 - A variance from the requirements of Chapter 50, Zoning, Section 28G.(5) of the Code of the Town of Lancaster for the purpose of reducing the required off-street loading spaces from six to three.

Based upon the foregoing factual and SEQRA findings, the Zoning Board of Appeals of the Town of Lancaster further finds that, with respect to Variance #2,

No undesirable change will be produced in the neighborhood by the granting of the area variances sought.

No detriment to nearby properties will result from the granting of the area variances sought.

The benefit sought by the applicant cannot be achieved by some other method, feasible for the applicant to pursue, other than the area variance relief sought.

The requested area variance relief is substantial, however, there are mitigating factors.

The proposed area variance relief will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

The alleged difficulty is self-created but not to the extent necessary to preclude the granting of the area variance relief sought.

This board has taken into consideration the benefit to the applicant if the variance relief sought is granted as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant.

Within the intent and purposes of this ordinance the variance relief sought, if granted, is the minimum variance necessary to afford relief.

Subject to the following conditions which in the opinion of the board are appropriate conditions to minimize adverse effects on the character of the surrounding area and to safeguard public health and the environment, safety, convenience and general welfare:

- Large semi-trailer trucks will be prohibited from traveling, stopping or standing in areas to the rear of the building.
- That during deliveries to the rear of the building and to the loading docks all trucks regardless of size will be prohibited from idling for more than a specified short period of time, namely 5 minutes.
- There shall be no deliveries between the hours of 11:00 PM and 7:00 AM.
Local Time

ON MOTION OF ZONING BOARD MEMBER LEHRBACH AND
SECONDED BY ZONING BOARD MEMBER ESPOSITO FOR ADOPTION OF
THE FOREGOING RESOLUTION TO APPROVE VARIANCE NUMBER TWO,
on roll, which resulted as follows:

MR. ESPOSITO	VOTED YES
MR. GIGLIA	VOTED YES
MR. MARYNIEWSKI	WAS ABSENT
MR. QUINN	VOTED YES
MR. SCHWAN	VOTED YES
MR. THILL	VOTED YES
MR. LEHRBACH	VOTED YES

Variance #3 - A variance from the requirements of Chapter 50, Zoning, Section 30F.(2)(c)[3][b] of the Code of the Town of Lancaster for the purpose of increasing the height of the pole sign from the maximum height allowed from 25 feet to 30 feet.

Based upon the foregoing factual and SEQRA findings, the Zoning Board of Appeals of the Town of Lancaster further finds that, with respect to Variance #3,

No undesirable change will be produced in the neighborhood by the granting of the area variances sought.

No detriment to nearby properties will result from the granting of the area variances sought.

The benefit sought by the applicant cannot be achieved by some other method, feasible for the applicant to pursue, other than the area variance relief sought.

The requested area variance relief is not substantial.

The proposed area variance relief will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

The alleged difficulty is self-created but not to the extent necessary to preclude the granting of the area variance relief sought.

This board has taken into consideration the benefit to the applicant if the variance relief sought is granted as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant.

Within the intent and purposes of this ordinance the variance relief sought, if granted, is the minimum variance necessary to afford relief.

ON MOTION OF ZONING BOARD MEMBER ESPOSITO AND
SECONDED BY ZONING BOARD MEMBER LEHRBACH FOR ADOPTION OF
THE FOREGOING RESOLUTION TO APPROVE **VARIANCE NUMBER THREE**,
on roll, which resulted as follows:

MR. ESPOSITO	VOTED YES
MR. GIGLIA	VOTED YES
MR. MARYNIEWSKI	WAS ABSENT
MR. QUINN	VOTED NO
MR. SCHWAN	VOTED NO
MR. THILL	VOTED NO
MR. LEHRBACH	VOTED NO

Variance denied

Variance #4 - A variance from the requirements of Chapter 50, Zoning, Section 19C.(7) of the Code of the Town of Lancaster for the purpose of permitting outdoor seasonal sales of merchandise not completely enclosed in a structure.

Based upon the foregoing factual and SEQRA findings, the Zoning Board of Appeals of the Town of Lancaster further finds that, with respect to Variance #4,

No undesirable change will be produced in the neighborhood by the granting of the area variances sought.

No detriment to nearby properties will result from the granting of the area variances sought.

The benefit sought by the applicant cannot be achieved by some other method, feasible for the applicant to pursue, other than the area variance relief sought.

The requested area variance relief is not substantial.

The proposed area variance relief will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

The alleged difficulty is self-created but not to the extent necessary to preclude the granting of the area variance relief sought.

This board has taken into consideration the benefit to the applicant if the variance relief sought is granted as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant.

Within the intent and purposes of this ordinance the variance relief sought, if granted, is the minimum variance necessary to afford relief, subject to the following condition which in the opinion of the board is an appropriate condition to minimize adverse effect on the character of the surrounding area and to safeguard public health and the environment, safety, convenience and general welfare:

- That the height of the merchandise stacked in the proposed seasonal sales area is limited to a height not to exceed 8 (eight) feet above the parking lot surface.

ON MOTION OF ZONING BOARD MEMBER LEHRBACH AND SECONDED BY ZONING BOARD MEMBER QUINN FOR ADOPTION OF THE FOREGOING RESOLUTION TO APPROVE VARIANCE NUMBER FOUR, on roll, which resulted as follows:

MR. ESPOSITO	VOTED YES
MR. GIGLIA	VOTED YES
MR. MARYNIEWSKI	WAS ABSENT
MR. QUINN	VOTED YES
MR. SCHWAN	VOTED YES
MR. THILL	VOTED YES
MR. LEHRBACH	VOTED YES

Variance granted

Variance # 5 - A variance from the requirements of Chapter 50, Zoning, Section 23B.(3) of the Code of the Town of Lancaster for the purpose of increasing the height of lighting fixtures from a maximum of 15 feet and 20 feet to 32 feet.

Based upon the foregoing factual and SEQRA findings, the Zoning Board of Appeals of the Town of Lancaster further finds that, with respect to Variance #5,

No undesirable change will be produced in the neighborhood by the granting of the area variances sought.

No detriment to nearby properties will result from the granting of the area variances sought.

The benefit sought by the applicant cannot be achieved by some other method, feasible for the applicant to pursue, other than the area variance relief sought.

The requested area variance relief is substantial, however, various lighting studies have demonstrated sufficient mitigation.

The proposed area variance relief will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

The alleged difficulty is self-created but not to the extent necessary to preclude the granting of the area variance relief sought.

This board has taken into consideration the benefit to the applicant if the variance relief sought is granted as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant.

Within the intent and purposes of this ordinance the variance relief sought, if granted, is the minimum variance necessary to afford relief, subject to the following conditions which in the opinion of the board are appropriate conditions to minimize adverse effect on the character of the surrounding area and to safeguard public health and the environment, safety, convenience and general welfare:

- That no pole lights shall be permitted in the required rear yard of the development.
- That all luminaries be flat lenses.
- That light shields be used to block any pole fixture light emissions reasonably deemed to be offensive to residents of the townhouse development to the east known as Northwood Village. That in the absence of a voluntary shield installation by the property owner upon request by a Northwood Village resident, the Lancaster Town Board, upon written request, shall be the body to investigate and deem whether a light fixture to be an offensive fixture [or the contrary] and order the installation of a shield.

ON MOTION OF ZONING BOARD MEMBER LEHRBACH AND SECONDED BY ZONING BOARD MEMBER QUINN FOR ADOPTION OF THE FOREGOING RESOLUTION TO APPROVE VARIANCE NUMBER FIVE, on roll, which resulted as follows:

MR. ESPOSITO	VOTED YES
MR. GIGLIA	VOTED NO
MR. MARYNIEWSKI	WAS ABSENT
MR. QUINN	VOTED YES
MR. SCHWAN	VOTED YES
MR. THILL	VOTED YES
MR. LEHRBACH	VOTED YES

Variance granted

Variance #6 - A variance from the requirements of Chapter 50, Zoning, Section 29D.(3) of the Code of the Town of Lancaster for the purpose of reducing the required landscaping of the interior parking area from five (5) per cent to one (1) per cent.

Based upon the foregoing factual and SEQRA findings, the Zoning Board of Appeals of the Town of Lancaster further finds that, with respect to Variance #6,

No undesirable change will be produced in the neighborhood by the granting of the area variances sought.

No detriment to nearby properties will result from the granting of the area variances sought.

The benefit sought by the applicant cannot be achieved by some other method, feasible for the applicant to pursue, other than the area variance relief sought.

The requested area variance relief is substantial, however, it is mitigated by the overall landscaping plan.

The proposed area variance relief will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

The alleged difficulty is not self-created.

This board has taken into consideration the benefit to the applicant if the variance relief sought is granted as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant.

Within the intent and purposes of this ordinance the variance relief sought, if granted, is the minimum variance necessary to afford relief.

ON MOTION OF ZONING BOARD MEMBER QUINN AND SECONDED BY ZONING BOARD MEMBER ESPOSITO FOR ADOPTION OF THE FOREGOING RESOLUTION TO APPROVE VARIANCE NUMBER SIX, on roll, which resulted as follows:

MR. ESPOSITO	VOTED YES
MR. GIGLIA	VOTED YES
MR. MARYNIEWSKI	WAS ABSENT
MR. QUINN	VOTED YES
MR. SCHWAN	VOTED YES
MR. THILL	VOTED YES
MR. LEHRBACH	VOTED YES

Variance granted

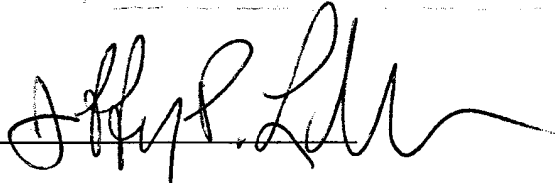
**SEQRA CERTIFICATION BY TOWN OF LANCASTER
ZONING BOARD OF APPEALS**

In accordance with 6 N.Y.C.R.R. § 617.11(d)(4) and (5), this is to certify that:

The requirements of the SEQRA regulations at 6 N.Y.C.R.R. Part 617 have been met.

Consistent with the social, economic and other essential considerations from among the reasonable alternatives available, the variances approved herein avoid or minimize adverse environmental effects to the maximum extent practicable, and adverse environmental impacts will be avoided or minimized by incorporating as conditions to the decision those mitigative measures that were identified as practicable.


Signed

A handwritten signature in black ink, appearing to read 'Jeffrey Lehrbach', written over a horizontal line.

Jeffrey Lehrbach
Chairman, Zoning Board of Appeals
Dated: January 23, 2003

ON MOTION DULY MADE BY MR. THILL AND SECONDED BY MR. ESPOSITO AND CARRIED, the meeting was adjourned at 9:58 P.M.

Signed

A handwritten signature in cursive script, appearing to read "Johanna M. Coleman", written over a horizontal line.

Johanna M. Coleman, Town Clerk and
Clerk, Zoning Board of Appeals
Dated: January 23, 2003